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SAN BERNARDINO and SAMUEL
FULLER

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

GALE SOSTEK; and HERB SOSTEK,

Plaintiffs,

vs.

COUNTY OF SAN BERNARDINO;
and DOES 1-10, inclusive,

Defendants.

Case No. 5:23-cv-02236 SPG (MRWx)

**DEFENDANTS, THE COUNTY OF
SAN BERNARDINO AND SAMUEL
FULLER'S ANSWER TO FIRST
AMENDED COMPLAINT OF
PLAINTIFFS GALE AND HERB
SOSTEK**

Trial Date: 1/28/25

COMES NOW, Defendants COUNTY OF SAN BERNARDINO and
SAMUEL FULLER ("Defendants") hereby answers the First Amended Complaint
("Complaint") filed by the Plaintiffs GALE SOSTEK and HERB SOSTEK
("Plaintiffs") in the above-entitled action as follows:

1. In answering paragraphs 1, 2, 3, 4, and 5 Defendants lack information
and belief sufficient to enable it to answer thereto and basing its denial on that ground,
denies generally and specifically each and every allegation contained therein.

2. In answering paragraph 6, Defendants admit the County is and was a
duly organized public entity under the laws of the state of California. Defendants
admit that Samuel Fuller was employed by the County. Except as expressly admitted,
Defendants lack information and belief sufficient to enable it to answer thereto and

1 basing its denial on that ground, denies generally and specifically each and every
2 remaining allegation contained therein.

3 3. In answering paragraphs 7, 8, 9, 10, 11, 12, and 13 Defendants admit that
4 Samuel Fuller was an employee of the County and acting within the course and scope
5 of his employment. Except as specifically admitted Defendants lack information and
6 belief sufficient to enable them to answer thereto and basing their denial on that
7 ground, deny generally and specifically each and every allegation contained therein.

8 4. In answering paragraphs 14 and 15, Defendants admit that Plaintiffs are
9 ostensibly invoking jurisdiction of this district court under 28 U.S.C. § 1331, 1343,
10 and 1367 and venue in the Central District of California. Except as so admitted,
11 Defendants lack information and belief sufficient to enable them to answer thereto
12 and basing their denial on that ground, deny generally and specifically each and every
13 allegation contained therein.

14 5. In answering paragraph 16, Defendants incorporate their responses to
15 paragraphs 1 through 15 above.

16 6. In answering paragraphs 16, 17, 18, 19, 20, and 21 Defendants lack
17 information and belief sufficient to enable them to answer thereto and basing their
18 denial on that ground, deny generally and specifically each and every allegation
19 contained therein.

20 7. In answering paragraph 22, Defendants incorporate their responses to
21 paragraphs 1 through 21 above.

22 8. In answering paragraphs 23, 24, 25, 26, 27, 28, 29, and 30 Defendants
23 lack information and belief sufficient to enable them to answer thereto and basing
24 their denial on that ground, deny generally and specifically each and every allegation
25 contained therein.

26 9. In answering paragraph 31, Defendants incorporate their responses to
27 paragraphs 1 through 30 above.

28 10. In answering paragraphs 32, 33, 34, 35, 36, 37 and 38 Defendants lack

1 information and belief sufficient to enable them to answer thereto and basing their
2 denial on that ground, denies generally and specifically each and every allegation
3 contained therein.

4 11. In answering paragraph 39, Defendants incorporate their responses to
5 paragraphs 1 through 38 above.

6 12. In answering paragraphs 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50
7 Defendants lack information and belief sufficient to enable them to answer thereto
8 and basing their denials on that ground, deny generally and specifically each and
9 every allegation contained therein.

10 13. In answering paragraph 51, Defendants incorporate their responses to
11 paragraphs 1 through 50 above.

12 14. In answering paragraphs 52, 53, 54, 55, and 56 Defendants lack
13 information and belief sufficient to enable them to answer thereto and basing their
14 denial on that ground, deny generally and specifically each and every allegation
15 contained therein.

16 15. In answering paragraph 57, Defendants incorporate their responses to
17 paragraphs 1 through 56 above.

18 16. In answering paragraph 58, the County denies it failed to properly and
19 adequately train its employees regarding the use of force, assessing the need to detain
20 and arrest, or that it failed to properly supervise. Defendants lack information and
21 belief sufficient to enable them to answer the remaining allegations in the paragraph
22 and basing their denial on that ground, deny generally and specifically each and every
23 remaining allegation contained therein.

24 17. In answering paragraphs 59, 60, and 61 Defendants lacks information
25 and belief sufficient to enable them to answer thereto and basing their denial on that
26 ground, deny generally and specifically each and every allegation contained therein.

27 18. In answering paragraph 62, Defendants incorporate their responses to
28 paragraphs 1 through 61 above.

19. In answering paragraphs 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, and 75 Defendants lacks information and belief sufficient to enable them to answer thereto and basing its denial on that ground, deny generally and specifically each and every allegation contained therein.

FIRST AFFIRMATIVE DEFENSE

20. Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action against these answering Defendants.

SECOND AFFIRMATIVE DEFENSE

21. Because Plaintiffs' Complaint is couched in conclusory terms, these answering Defendants cannot fully anticipate all of the affirmative defenses that may be applicable to the action, accordingly, the right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are applicable, is hereby reserved.

THIRD AFFIRMATIVE DEFENSE

22. Plaintiffs have failed to mitigate their damages, which damages are denied to exist.

FOURTH AFFIRMATIVE DEFENSE

23. Plaintiffs' Complaint is not maintained in good faith and with reasonable cause for purposes of 42 U.S.C. §§ 1983 and 1988.

FIFTH AFFIRMATIVE DEFENSE

24. These answering Defendants asserts that any recovery on Plaintiffs' Complaint, or any purported claim or cause of action alleged therein, is barred in whole or in part by Decedent Kyle Sostek's and/or Plaintiffs' comparative fault.

SIXTH AFFIRMATIVE DEFENSE

25. These answering Defendants asserts that any recovery on the Plaintiffs' Complaint, or any purported claim or cause of action alleged therein, is barred in whole or in part by Decedent Kyle Sostek's and/or Plaintiffs' own conduct.

SEVENTH AFFIRMATIVE DEFENSE

26. Pursuant to Government Code section 818, as well as *The City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981), the County is not liable for exemplary or punitive damages in any sum, or at all.

EIGHTH AFFIRMATIVE DEFENSE

27. These answering Defendants are immune from liability pursuant to the Federal Civil Rights Act where it reasonably believed that its actions were lawful.

NINTH AFFIRMATIVE DEFENSE

28. Plaintiffs did not sustain an injury, if at all, sufficient to give rise to a violation of their federal civil rights.

TENTH AFFIRMATIVE DEFENSE

29. Each of Plaintiffs' claims is barred by the applicable statute of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

30. That the actions of these answering Defendants in all respects was reasonable, proper, and legal.

TWELFTH AFFIRMATIVE DEFENSE

31. Neither a public entity nor public employees are liable for his or her act or omission exercised in due care, in the execution or enforcement of any law.

THIRTEENTH AFFIRMATIVE DEFENSE

32. Neither a public entity nor public employees are liable for any injury caused by the act or omission of another person.

FOURTEENTH AFFIRMATIVE DEFENSE

33. Neither a public entity nor public employees acting in good faith, without malice, and under the apparent authority of an enactment that is unconstitutional, invalid or inapplicable, is liable for injury caused thereby, except to the extent that he or she would have been liable had the enactment been constitutional, valid and applicable.

FIFTEENTH AFFIRMATIVE DEFENSE

34. Plaintiffs' suit is barred by the provisions of California Government Code sections 815(a-b), 815.2(b), 818.8, 820.2, 820.4, 820.8, 821.6, and 945.4.

SIXTEENTH AFFIRMATIVE DEFENSE

35. These answering Defendants allege that the damages allegedly suffered by Plaintiffs, which said damages are generally and specifically denied to exist, were the result of the active and affirmative negligent acts or omissions to act of independent third parties and/or entities whose active and affirmative negligence and/or omissions to act resulted in superseding and intervening causes of Plaintiffs' alleged damages which thereby relieves these answering Defendants from liability.

WHEREFORE, this answering Defendant prays:

1. That Plaintiffs take nothing by their Complaint on file herein;
2. For costs of suit incurred herein;
3. For attorneys' fees, and
4. For such additional remedies as the Court may find just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Local Rule 38-1, these answering Defendants hereby demand a jury trial as provided in Rule 38(b) of the Federal Rules of Civil Procedure.

DATED: April 2, 2024

WESIERSKI & ZUREK LLP

By:



CHRISTOPHER P. WESIERSKI
Attorneys for Defendant, COUNTY OF SAN
BERNARDINO